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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICHARD DAHNKEN

**Plaintiff,**

No. C 13-2838 PJH

v.

WELLS FARGO BANK, N.A., et al.,

## Defendants.

## **ORDER GRANTING MOTION TO DISMISS**

14 Defendants' motion to dismiss came on for hearing before this court on January 29,  
15 2014. Plaintiff Richard Dahnken ("plaintiff") appeared through his counsel, Charles  
16 Marshall. Defendants Wells Fargo Bank, JP Morgan Chase Bank, and Mortgage Electronic  
17 Registration Systems, Inc. ("defendants") appeared through their counsel, Roxana  
18 Vatanparast. Having read the papers filed in conjunction with the motion and carefully  
19 considered the arguments and relevant legal authority, and good cause appearing, the  
20 court hereby GRANTS defendants' motion to dismiss as follows.

21 This is a mortgage case. The court's previous order, dismissing the complaint with  
22 leave to amend, sets forth the relevant factual background, which is not repeated here.  
23 See Dkt. 26 (November 8, 2013). In short, plaintiff alleged that his loan was not assigned  
24 to Wells Fargo before the closing date of the trust, in violation of the relevant Pooling  
25 Service Agreement ("PSA"), which rendered the securitization of his loan invalid and  
26 rendered all subsequent transactions void. The court specifically rejected plaintiff's  
27 argument, and instead followed the "majority position" of courts within this district, which is  
28 that "plaintiffs lack standing to challenge noncompliance with a PSA in securitization unless

1 they are parties to the PSA or third party beneficiaries of the PSA.” Shkolnikov v. JP  
2 Morgan Chase Bank, 2012 WL 6553988, at \*13 (N.D. Cal. Dec. 14, 2012); see also, e.g.,  
3 Almutarreb v. Bank of New York Trust Co., 2012 WL 4371410 (N.D. Cal. Sept. 24, 2012).  
4 Plaintiff’s standing argument is further undermined by the fact that he has defaulted on his  
5 loan and has not made a payment since September 2008, which prevents him from  
6 showing that he was prejudiced by any irregularity in the securitization process.  
7 Accordingly, the court granted defendants’ motion to dismiss, and while the court did allow  
8 plaintiff an opportunity to amend his complaint, it specifically instructed plaintiff that “any  
9 amended complaint may not re-allege claims that are based on flaws in the securitization  
10 process or defendants’ purported failure to comply with the requirements of the PSA.” Dkt.  
11 26 at 4.

12 On December 6, 2013, plaintiff filed the operative first amended complaint (“FAC”),  
13 asserting the same ten causes of action that were asserted in his original complaint;  
14 namely, (1) wrongful foreclosure, (2) quiet title, (3) slander of title, (4) fraud, (5) cancellation  
15 of instruments, (6) violation of Cal. Civ. Code § 2924.17, (7) violation of Cal. Civ. Code §  
16 2934(a)(1)(A), (8) violation of Cal. Bus. & Prof. Code § 17200, (9) negligence, and (10)  
17 unjust enrichment. Also, critically, the FAC is still premised on the argument that “the  
18 securitization of his loan, without more, extinguished any interest in his loan held by”  
19 defendants or their predecessors-in-interest. See FAC, ¶ 3. Plaintiff also re-argues that  
20 “California district courts are split as to whether a plaintiff has standing to challenge a  
21 securitization transaction not organized under New York law,” even though the court  
22 specifically rejected plaintiff’s standing argument in dismissing the original complaint. As a  
23 result, the FAC is subject to dismissal under Federal Rule of Civil Procedure 41(b), based  
24 on plaintiff’s failure to comply with a court order.

25 The FAC is also subject to dismissal on the merits, and it is on that basis that the  
26 court GRANTS defendants’ motion to dismiss. Each of plaintiff’s causes of action is based  
27 on the premise that defendants lack any interest in plaintiff’s loan, and thus any of their  
28 activities (either in collecting loan payments or initiating foreclosure-related activities) was

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1 void. However, as discussed above, the court already considered and rejected this  
2 argument in dismissing the original complaint. While plaintiff cites the recently-issued  
3 opinion in Subramani v. Wells Fargo to support his argument, the court notes that the  
4 Subramani court specifically held that “plaintiffs who are not parties to PSAs lack standing  
5 to challenge” alleged violations of a PSA, which is consistent with the court’s dismissal  
6 order in this case. Subramani, 2013 WL 5913789 at \*3 (N.D. Cal. Oct. 31, 2013). While  
7 the Subramani court did deny the defendant’s motion to dismiss, it did so only after  
8 concluding that “[t]his case is not like the cases defendant cites, in which the plaintiffs rely  
9 solely on violations of a PSA or securitization in itself.” Id. at \*4. Thus, Subramani is  
10 distinguishable from the present case, in which plaintiff admits that “the securitization of his  
11 loan, without more, extinguished any interest in his loan” held by defendants or their  
12 predecessors-in-interest. FAC, ¶ 3 (emphasis added). The court also notes that plaintiff’s  
13 argument for avoiding the tender requirement is derivative of his securitization argument;  
14 specifically, he argues that “it is well-settled that plaintiff is not required to allege tender to  
15 the defendants if they, in fact, are not the true owners of the loan.” Dkt. 32 at 9. Because  
16 the court rejects plaintiff’s conclusory argument that defendants are “not the true owners of  
17 the loan,” plaintiff cannot avoid the tender requirement, and his failure to allege tender is  
18 fatal to at least his first and second causes of action.

19 Plaintiff also alleges that certain assignments of the loan were void because they  
20 were “robo-signed.” However, courts in this circuit have consistently found that conclusory  
21 allegations of robo-signing are insufficient to state a claim, absent some factual support.  
22 See, e.g., Baldoza v. Bank of America, N.A., 2013 WL 978268 at \*13 (N.D. Cal. Mar. 12,  
23 2013); McGough v. Wells Fargo Bank, 2012 WL 5199411 at \*6 (N.D. Cal. Oct. 22, 2012);  
24 Chan Tang v. Bank of America, N.A., 2012 WL 960373 at \*10-11 (C.D. Cal. March 19,  
25 2012); Sohal v. Fed. Home Loan Mortg. Corp., 2011 WL 3842195 at \*5 (N.D. Cal. Aug. 30,  
26 2011); Chua v. IB Property Holdings, LLC, 2011 WL 3322884 at \*2 (C.D. Cal. Aug. 1,  
27 2011).

28 Next, plaintiff alleges that Wells Fargo did not record its own notice of default, but as

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1 defendants point out, Cal. Civ. Code § 2924(a)(1) allows a notice of default to be recorded  
2 by a “trustee, mortgagee, or beneficiary, or any of their authorized agents.” Plaintiff  
3 presents no authority for the argument that Wells Fargo was required to record its own  
4 notice of default.

5 Finally, while the foregoing findings dispose of the majority of plaintiff’s asserted  
6 causes of action, the court separately addresses plaintiff’s sixth (Cal. Civ. Code 2924.17)  
7 and ninth (negligence) causes of action. As to the sixth cause of action, section 2924.17  
8 came into effect on January 1, 2013, applies only to “mortgage services,” and is not  
9 retroactively applied. Thus, the provision could not apply to the first four notices of  
10 trustee’s sale recorded against the subject property, because each was recorded prior to  
11 January 2013. And section 2924.17 does not apply to the fifth (and final) notice of trustee’s  
12 sale, because it was recorded by California Reconveyance Company as trustee, not by the  
13 servicer itself.

14 As to the ninth cause of action, the court notes that a financial institution “owes no  
15 duty of care to a borrower when the institution’s involvement in the loan transaction does  
16 not exceed the scope of its conventional role as a mere lender of money.” Nymark v. Heart  
17 Fed. Savings & Loan Assn., 231 Cal.App.3d 1089, 1095 (1991). Plaintiff argues that  
18 defendants exceeded the scope of a traditional lender by initiating “fraudulent” foreclosure  
19 proceedings, but as discussed above, the court finds that plaintiff’s allegations of fraud lack  
20 merit. Thus, defendants owed no duty of care to plaintiff.

21 For all of the foregoing reasons, defendants’ motion to dismiss the FAC is  
22 GRANTED as to all ten of plaintiff’s asserted claims. Because plaintiff has already been  
23 granted leave to amend, and failed to cure the deficiencies of his complaint, the dismissal  
24 shall be with prejudice.

25 **IT IS SO ORDERED.**

26 Dated: February 6, 2014

  
27 PHYLIS J. HAMILTON  
28 United States District Judge